Supreme Court, U.S.
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No. 09-781

IN THE

Supreme Court of the United States

STATE OF MINNESOTA,
Petitioner,

v.

DANON JASON RUSSELL,
Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeals Of Minnesota

REPLY TO BRIEF IN OPPOSITION

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Respondent acknowledges the "split of authority on the application of *Lopez-Mendoza*." Brief in Opposition ("BIO") 1. He nonetheless argues at length that the Minnesota Court of Appeals correctly concluded that *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032 (1984), does not preclude suppression of illegally-obtained knowledge of identity. BIO 6-10. But this argument is not relevant to his meritless assertion that "this case is not a proper or effective vehicle for addressing" the split among the federal circuits. BIO 1.

Respondent makes two claims why this case is not appropriate for resolving the "meaning of the *Lopez-Mendoza* 'identity statement' [that] has bedeviled and divided" the circuits.[1] First, respondent argues that the court of appeals' decision is grounded on independent state law. BIO 2-4. He is wrong. The court of appeals cited state law to support its finding that the seizure here was illegal, and for the general proposition that illegally obtained evidence should be suppressed. Appendix to Petition for Writ of Certiorari ("App") 5-8. But petitioner neither seeks review of the finding that the seizure was illegal, nor challenges the general proposition that the exclusionary rule applies to illegally obtained evidence. Petitioner's argument is that under *Lopez-Mendoza*, knowledge of identity is not suppressible "evidence." On this issue, the court of appeals relied solely on federal law. App 9-11. Importantly, the court did not cite any state law purportedly trumping *Lopez-Mendoza*; it simply concluded

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[1] *United States v. Oscar-Torres*, 507 F.3d 224, 228 (4th Cir. 2007).

that the proper reading of *Lopez-Mendoza* is that "illegal police activity does not affect the court's jurisdiction" but knowledge of identity nevertheless is subject to suppression. App 10-11.[2]

Respondent's second argument is not clear. He asserts that petitioner is asking this Court to act as an error-correcting court. Respondent is correct, in the sense that petitioner is asking this Court to correct the court of appeals' erroneous reading of *Lopez-Mendoza*, and thereby resolve the circuit split over that case's "identity statement." Petitioner is not, however, asking this Court to correct a factual or state-law error on probable cause. BIO 4-5. As noted in the cert petition, whether there was probable cause for the search warrant is an issue the court of appeals did not reach – and on which remand would be appropriate – because of its conclusion that knowledge of identity should have been suppressed, which would have rendered the warrant targetless and therefore invalid. App 11. While it is possible, though unlikely,

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[2] Although the court of appeals used the phrase "evidence of identity," its conclusion makes clear that it is suppressing knowledge of identity. App 11. It orders suppression of the DNA obtained with the search warrant, because "[a] warrant cannot issue without identifying its target," and police knowledge of the identity of the warrant's target (respondent) came from the illegal seizure. In other words, the court of appeals concluded that the search warrant was improperly issued because a search warrant must include a name, and the police only learned respondent's name because of an illegal stop. Id. The court of appeals did *not* hold the warrant invalid because illegally obtained "evidence of identity" was included in the probable-cause portion of the warrant. Id. at 8-11. The court only addressed the source of police knowledge of respondent's identity, which was necessary for issuance of the warrant. Id.

that respondent will prevail on the probable-cause issue if this case is remanded, that does not make this case an inappropriate vehicle for resolving the meaning of the *Lopez-Mendoza* "identity statement." [3]

Finally, a brief comment on the merits: respondent essentially argues this Court did not really mean what it said in *Lopez-Mendoza* – that the "identity of a defendant ... in a criminal ... proceeding is never itself suppressible as a fruit of an unlawful arrest ..." 468 U.S. at 1039. While some courts have agreed with respondent's argument, many have not, which is why this important question should be resolved by this Court.

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[3] It is unlikely that respondent will prevail on the probable-cause issue, if this case is remanded, because the test for probable cause is easily met by the eye-witness's statement that he saw respondent handling the seized gun. App 4. This is the substantive evidence the state relied on in the search-warrant application (as opposed to the facts included in the application for context). Appendix to BIO 10. Similarly, the substantive (not background) evidence the state used to convict respondent of illegal possession of this gun is the DNA found on it, which *matches* respondent's DNA. App 4 5. Lastly, petitioner does not argue that respondent had an outstanding warrant and this "dissipated any taint of the unlawful seizure." BIO 5 n.6. Petitioner's argument is that "arrest-warrant cases illustrate the principle that knowledge of identity is not subject to suppression." Petition 6.

CONCLUSION

This Court should grant the petition for writ of certiorari.

Dated: March 19, 2010

Respectfully submitted,

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